

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6453**

**BILL NUMBER:** HB 1103

**NOTE PREPARED:** Nov 27, 2002

**BILL AMENDED:**

**SUBJECT:** Capital Murder.

**FIRST AUTHOR:** Rep. Bottorff

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

(A) It creates the criminal offense of capital murder.

(B) It provides that a conviction for capital murder results in a sentence of death unless: (1) a court determines that mitigating factors outweigh aggravating factors; or (2) the defendant is found to be mentally retarded.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** Creating the offense of capital murder would increase the involvement of the Office of Attorney General and the State Public Defender's Office if more death penalty cases are filed because of this bill. More death penalty cases could increase requests for reimbursements to counties from the Public Defense Fund, which reimburses counties 50% for the cost of defending indigent persons tried in capital cases. See also *Explanation of Local Expenditures*.

Public Defense Fund expenditures for FY 1996 through FY 2002 for partially reimbursing counties for the costs of capital cases are provided in the following table.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Capital	\$799,450	\$526,512	\$378,209	\$712,055	\$473,317

***Background Information:*** There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The

Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$3,724. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$12,004 for a case involving life without parole. Besides the staff costs for legal representation, both the Department of Correction (DOC) and the Indiana State Police generally incur added overtime costs for providing security in death penalty cases around the time of the execution.

The costs to the Department of Correction would be greater if an offender is housed in DOC facilities for a determinate sentence of between 45 and 65 years or for life without parole than if an offender is executed.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** This bill could increase the number of requests for a death penalty. This is because the occurrence of a death in the commission of a child molesting, criminal deviant conduct, or rape under *Provision A* does not have to be intentional in order for the death penalty to be pursued. Under current law, a prosecuting attorney can request either the death penalty or life without parole only when an intentional killing occurs and one of 16 aggravating circumstances can be proved.

*Background Information:* Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options:

<b><u>Sentencing Option</u></b>	<b><u>Number of Defense Attorneys Needed</u></b>	<b><u>Type of Trial Conducted</u></b>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and

65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

<b>Cost Components for Murder Trials:</b>		
	<b><u>Death Penalty</u></b>	<b><u>Life Without Parole</u></b>
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

The cost of legal representation for a criminal defendant in a death penalty is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

As of November 2002, ten defendants were awaiting trial in six counties where the death penalty had been requested by the prosecuting attorney.

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

**Local Agencies Affected:** Trial Courts, County Sheriff.

**Information Sources:** Indiana Supreme Court; *The Application of Indiana’s Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission*, January 2002; Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>

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